

John KERRY, *et al.*
Serial No. 10/594,678
February 6, 2009

REMARKS/ARGUMENTS

Reconsideration of this application is respectfully requested.

The rejection of claims 1 and 6-9 under 35 U.S.C. §103 as allegedly being made “obvious” based on Napiorkowski ‘516 is respectfully traversed.

Initially, it is noted that the Examiner’s bullet points apparently intended to parallel the recitations of claim 1 completely fail to address the requirement for the termination means to be enclosed within an external area of the customer premises.

Indeed, the whole of the Napiorkowski teaching is directly contrary to providing an NID (network interface device) that is (a) enclosed within an external wall of the customer’s premises, and (b) having first and second openable and closeable access apertures, one to permit access to the termination means from outside the customer premises and the other to permit access to the termination means from within the customer premises. Instead, Napiorkowski teaches only an NID which can be mounted on a customer premise wall. While it is true that Napiorkowski teaches that the NID may be mounted either on an outside wall or an inside wall of the customer premises, this is of course directly contrary to disposing the NTD within an external wall of the customer premises.

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The applicants' claimed invention not only places the NID within an external customer premise wall (thus substantially protecting it from abuse and from presenting an unsightly appearance), the applicants' claimed invention also provides exclusive access by the customer to one side of the NTD (i.e., from within the customer premises) and also provides the network service provider with exclusive access from the other side of the NID (i.e., from outside the customer premises).

By contrast, the Napiorkowski NID requires both customer access and/or service provider access to be achieved through only a single side of the apparatus – whether that be inside the customer premises or outside the customer premises. That is, one side of a Napiorkowski NID is mounted on a wall and the other side of the NID therefore projects outwardly from that wall and has at least one openable door to provide access thereto. There is no openable door on the back side of the Napiorkowski NID. Indeed, the back side of the Napiorkowski NID is totally obstructed by its mounting on a customer premise wall.

The Examiner does recognize that Napiorkowski fails to “explicitly” disclose a second openable and closeable access aperture to permit access from within the customer premises. To supply this admitted deficiency, the Examiner notes that the Napiorkowski NID may be mounted on either an inside or an outside customer premise wall. However,

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as noted above in detail, this does not provide any possible suggestion leading towards applicants' claimed invention. Indeed, because Napiorkowski discloses only an NID mounted on a customer premise wall, it directly teaches away from providing first and second openable and closeable access apertures to permit access to the termination means from both (a) outside the customer premises, and (b) within the customer premises.

The Examiner's assertion that the Napiorkowski NID is "scalable to add subscribers" is perhaps not understood. There is no teaching in Napiorkowski that any such single NID as described therein is contemplated for scalable modification so as to add plural subscribers. Furthermore, even if that modification is achieved, that still fails to in any way teach or suggest the applicants' claimed invention.

Actually, the clear teaching to those skilled in the art is that if Napiorkowski wishes to service plural subscribers, then plural NID devices would be attached to a suitable customer premise wall. If the Examiner believes that there is any teaching or suggestion in Napiorkowski for such scalability, it is respectfully requested that such be particularly pointed out.

Furthermore, even if such be contemplated, there would presumably have to be a plurality of "inner" compartments within the NID, one for each different customer. And, yet further, even if such were hypothesized, that would still not provide an NID that is

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enclosed within an external wall of the customer premises – let alone first and second openings which permit access both from within the customer premises and from outside the customer premises. Such is absolutely contrary to the Napiorkowski teaching – and therefore the epitome of non-obviousness and patentability.

The Examiner's citation to extremely old case law paraphrased as allegedly holding that mere duplication of essential working parts only requiring routine skill in the art has no applicability to the facts here at issue. Applicants are not merely duplicating essential working parts of the Napiorkowski teaching. Applicants have described and claimed an NID which is remarkably and distinctly different from any possible teaching or suggestion of Napiorkowski.

The Examiner's attempt to find some motivation or suggestion in Napiorkowski (“to add scalability and access to a network device and further because to duplicate such a device would be routine...”) simply completely misses the mark.

The rejection of claims 2-5 under 35 U.S.C. §103 as allegedly being made “obvious” based on Napiorkowski in view of Magyar ‘942 is also respectfully traversed.

In brief, fundamental deficiencies of Napiorkowski have already been noted above – and Magyar, if even combined *arguendo* with Napiorkowski – fails to supply such deficiencies.

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In particular, Magyar simply relates to a recessed electrical power receptacle in an outside wall of a residence or business. This is not an NID – and it does not provide first and second openable and closeable access apertures which respectively permit access to a communications network termination from both (a) outside the customer premises and (b) from within the customer premises.

The fact that these are quite disparate devices is also made apparent from the classification notations found on the front page of both references. One has nothing whatsoever to do with the other.

It is also noted that the Examiner has failed to address the limitations of claims 2-4.

The rejection of claim 10 under 35 U.S.C. §103 as allegedly being made “obvious” based on Napiorkowski in view of Romano (presumably intended to reference US 2003/0184446) is also respectfully traversed.

It is noted that in the Examiner’s comments, reference is also made to US 2004/0268160 (Atkinson, *et al.*). Accordingly, it is unclear upon which secondary reference the Examiner is actually relying.

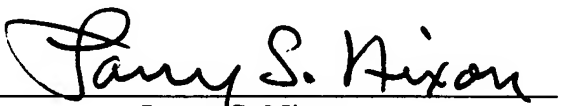
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In any event, fundamental deficiencies of Napiorkowski have already been noted above, and neither of these references supplies those fundamental deficiencies. Of course, applicants are not claiming to be the first to devise a solar power supply as an electrical backup – however, 35 U.S.C. §103 requires that the applicants' claimed subject matter be considered "as a whole" rather than in the piecemeal fashion apparently adopted by the Examiner.

Accordingly, this entire application is now believed to be in allowable condition, and a formal notice to that effect is earnestly solicited.

Respectfully submitted,

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